ARTICLE APPEARED
ON PAGE C-8

WASHINGTON POST
24 February 1985

Jody Powell

The 'Truth' Other Media Should Have Looked For

Unlike the Time-Sharon clash, which had a rough symmetry to its conclusion, the Westmoreland suit against CBS has come to a tepid and faintly sour end that leaves no one feeling very pleasant.

Gen. William Westmoreland finally came hard up against the difficulty of winning a libel suit if one is a public figure and decided to cut his losses. He had not proven that allegations of a conspiracy to deceive his superiors about enemy troop strength were made with the knowledge that they were untrue or with a reckless disregard for whether they were true.

More to the point, had Judge Pierre Leval asked the jury to reach separate conclusions on whether the allegations were defamatory, false and libelous—as Judge Abraham D. Sofaer did in the Sharon case—the likelihood is that the jury would not have found the allegations to have been false. That is different from a finding that they were true, but the distinction would have been quickly and irretrievably blurred.

However, it is also true that CBS, with the benefit of much more time and expense than were devoted to the original broadcast, failed to prove that the allegations were true. (It should be noted that the burden of such proof did not legally fall upon CBS, nor should it have, but there is no doubt that CBS presented the very best evidence it could find to support its charges.)

That is the heart of the problem. The "truth" in this case is that the "truth" is probably unknowable. There are good arguments and an ample quantity of evidence on both sides. In that sense it much more closely resembles the usual bone of contention between public figures and journalists than the Sharon case, for example, where the existence of a specific statement in a specific report was subject to verification.

The unanswered and largely undiscussed question arising from all this has to do with the responsibilities of journalists when dealing with such ambiguous situations. It goes to the instinctive reaction of distaste and distrust, which this writer and, I suspect, a growing number of Americans feel when we see something like "The Uncounted Enemy: A Vietnam Deception."

If the "truth" is, as the evidence presented in court strongly suggests, that the question of deception is an interesting one that can be argued both ways, CBS failed miserably in its responsibility to present that "truth" to the American public. The purpose of "The Uncounted Enemy" was not to inform but to persuade.

Those who produced it had clearly concluded that Westmoreland was guilty of deception, which is not unreasonable. They then decided to air a program that spared no effort to convince the American public that their conclusion was the only correct one possible: Statements supporting the conspiracy theory were edited, coached and polished to make them more persuasive; those to the contrary were largely disregarded. That sort of behavior is unreasonable, irresponsible and, I would submit, a clear and present danger to the profession of journalism.

In that sense "The Uncounted Enemy" is subject to the same criticisms that news people are so fond of leveling at docudramas. The greatest sin against reality and responsibility is not the use of actors and re-creations but the careful selection of fact and opinion to present only one side of a complicated and contentious issue. If Mike Wallace and producer George Crile wish to indulge in such behavior, they should leave the news side of journalism and join those of us who write columns and offer commentary.

What then is to be done? The answer cannot be found in the law. Even those of us who support tougher libel law would not favor an interpretation that allowed a successful suit under such ambiguous conditions.

To a degree the answer is greater responsibility on the part of individual news organizations: Accusatory polemics masquerading as documentaries have no place in a serious news operation. But only to a degree. Leaving frail mortals to police themselves, to be the sole judge of their own conduct, has never worked very well anywhere, and there is no reason to believe that the news business is any different.

Ironically, the Westmoreland-CBS affair does offer a strong suggestion about what can and ought to be done. It was a news organization that first brought the errors and omissions of Wallace and company to light. It was the furor created by that TV Guide exposé that prompted CBS to conduct its own revealing and somewhat embarrassing investigation.

What journalism desperately needs is much, much more of the same. If a news organization, particularly one so powerful as a network, opts for the simplistic and the sensational rather than for the often ambiguous truth, the rest of us have an obligation to help set the record straight. The appearance of such "reports" should be a red flag demanding investigation and a second look. The alternative is worse than more libel suits or a too sweeping change in the libel law. It is a continuing erosion of public confidence and, worst of all, a misinformed public, lacking the information necessary to make the judgments required in a democracy.